

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-217010

DATE: February 12, 1985

MATTER OF: Development Alternatives, Inc.

DIGEST:

1. Evaluation of offeror's proposed key personnel, who were changed after award, is not objectionable when offeror provided firm letters of commitment and submitted names in good faith.
2. Whether offeror substituted key personnel immediately following contract award in a manner inconsistent with the requirements of the contract is a matter of contract administration which is not for GAO review.

Development Alternatives, Inc. (DAI), protests the award of a contract to the University of Southern California (USC) under solicitation No. RFP/COD/OTR-016, issued by the Agency for International Development (AID) for the implementation and evaluation of a Development Studies Program. DAI contends that USC's proposal was improperly evaluated and that USC substituted key personnel immediately following contract award in a manner inconsistent with the requirements of the contract. We deny the protest in part and dismiss it in part.

The contracting officer awarded the contract to USC on September 28, 1984. On October 10, 1984, DAI protested to AID, alleging that USC failed to satisfy the requirements that AID detailed in the RFP for faculty personnel. The quality of personnel was assigned 50 percent in the RFP's evaluation scheme. Firm letters of commitment from the individuals nominated as core faculty members, including the project director, were required. According to DAI, USC made recruiting overtures after contract award to several individuals, indicating that final decisions had not yet been made on the core faculty positions. From these facts, DAI concludes that either: (1) AID knowingly signed a contract with an institution which did not have personnel of the requisite caliber to carry out the project, or (2) USC concealed its weaknesses in the critical area of staffing

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until after the contract was signed, perhaps by using "stalking horses" (candidates who had no intention of working on the contract if it were awarded) in its proposal.

AID denied DAI's protest on October 19, stating that USC provided letters of commitment from all proposed personnel and that the Project Director proposed by USC was listed under the "Key Personnel" section of the contract. AID was satisfied that USC did not propose personnel which it had no intention of providing.

On November 1, 1984, DAI filed a protest with our Office, raising the same issues as in its protest to AID and alleging that USC had notified the individual whose name appeared as project director in USC's proposal--and whose name appeared in the "Key Personnel" clause of the contract--that his services would not be required, and that another person had been recruited for that position. DAI argues that USC thus changed personnel immediately after the contract was signed, without the knowledge of the proposed individual and, presumably, without AID's prior knowledge or approval. DAI contends that the substitutions made by USC amounted to far more than a minor modification of its proposal and effectively invalidated USC's proposal.

DAI's objection that USC's proposal was improperly evaluated is not supported by the record. For key employees to be considered in the evaluation of the offeror's proposal, absent a contractual relationship, the agency must reasonably be assured that they are firmly committed to the offeror. See Management Services Incorporated, 55 Comp. Gen. 715 (1976), 76-1 C.P.D. ¶ 74. Here, AID provided for such assurance by including in its RFP requirements that "written confirmation from long-term personnel attesting to their intentions and availability to work on this contract for the term stated must be provided with the offeror's proposal." USC provided the required letters of commitment.

An agency's evaluation of an offeror's key personnel, even though some are changed after award, is not objectionable when the names are submitted in good faith by the offeror with the consent of the respective individuals. Kirschner Associates, Inc., B-187625, June 15, 1977, 77-1 C.P.D. ¶ 426. Here, it appears that USC submitted the names of key personnel in good faith and with their consent. According to USC, two of the four individuals originally proposed are working on the contract. A third individual informed USC just after the contract was signed that she had decided to stay at her current job and would be unavailable to serve on the project. A fourth individual introduced new conditions for his employment as project director after the

contract was signed, which conditions USC determined were inappropriate for the project director's role and inconsistent with USC's administrative policies for full-time administrators. In view of these facts and AID's report that USC did not propose personnel which it had no intention of providing, we conclude that the aspect of DAI's protest dealing with improper evaluation of USC's proposal is without merit.

Both the RFP and the contract awarded to USC contained a key personnel provision requiring consent of the contracting officer for changes in key personnel. Under this provision, AID insures that the contractor replaces key personnel with individuals who have equal or better qualifications. Whether USC substituted key personnel immediately following contract award in a manner inconsistent with the requirements of the contract is a matter of contract administration, which is not for our review. Reliability Sciences, Inc., B-205754.2, June 7, 1983, 83-1 C.P.D. ¶ 612.

The protest is denied in part and dismissed in part.

for Seymour E. Egan
Comptroller General
of the United States